IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1218 OF 2004

IN

SUIT NO.1186 OF 2004

Jer Jawhar Thadani. .... Plaintiff.

vs.

Mohan Gurbaxani & others. ... Defendants.

Mr.Snehal Shah i/b. Dhru & Co., for Plaintiff.

Mr.Kirit Munshi i/b. A.P.Vaidya & co. for Defendant no.1 to 3.

Mr.Leon Samuel with Mr.V.B.Pingo i/b. M/s. Advani & Co. for Defendant nos.4 & 5.

CORAM: D.K.DESHMUKH,J.

DATED: 28th April,2005

P.C.:-

1. This is a suit for administration of the estate of deceased Jawhar Thadani. The plaintiff admittedly is the Widow of the deceased. The plaintiff has described the estate left behind by the deceased at “Exhibit O”. So far as the property at Sr.no.1 is concerned, it is a flat. Admittedly, that flat presently

is in possession of the Widow. The defendant nos. 4 and 5 claim to be transferees of the flat and that the transfer was made during the life time of the deceased. The plaintiff is challenging the validity of that transaction. As the plaintiff, admittedly, is in possession of a flat, in my opinion, the defendant nos. 4 and 5 cannot be permitted to disturb her possession except by due process of law. In my opinion, therefore, order of temporary injunction will be necessary to protect the possession of the plaintiff. In this view of the matter therefore, defendants are restrained from disturbing the possession of the of the plaintiff of the Flat no.193, Jupiter Twin Star Co-op. Housing Society Ltd, Cuffe Parade, Mumbai-400005, except by due process of law, during the pendency of the suit.

2. So far as the other property viz. the amounts of deposits are concerned, the defendant no.1 claims those amounts under a Will alleged to have been executed by the deceased. But the admitted position is that even proceedings for obtaining probate of that Will have not been initiated. The defendant no.1 in his affidavit filed in reply to this Notice of Motion states that he has disbursed the amount of Rs.76,22,431.50/- (Rupees Seventy Six lakhs Twenty Two thousand Four hundred Thirty One and Fifty paise only) from the amount in deposits which was admittedly the property of the deceased. It appears to be an admitted position that the deceased left behind no heirs except the plaintiff. If the Will is admittedly not probated, the defendant no.1 has no authority to disburse any amount under the Will. In my opinion, therefore, so

far as the properties at Sr.nos.2,3 and 4 at Exhibit O is concerned, it would be appropriate to appoint Receiver . Accordingly, Receiver of this Court is appointed as Receiver of the deposits described at Sr.nos.2, 3 and 4 at "Exhibit O". The Receiver shall take in its custody all the documents relating to these deposits from defendant no.1. The Receiver shall take appropriate steps for protecting the property. The defendant no.1 is directed to deposit amount of Rs.76,22,431.50/- which admittedly has been disbursed by defendant no.1 from the deposits, in this Court within a period of Six Weeks from today, with due intimation to the plaintiff. On deposit being made, the amount shall be invested in fixed deposit in a nationalised Bank.

3. The Receiver shall be free to seek appropriate orders of the Court in relation to the deposits after taking custody of the documents from defendant no.1.

4. The plaintiff shall be entitled to apply for further reliefs after the Receiver takes custody of the documents relating to the deposits and the defendant no.1 deposits the amount.

5. It is made clear that the defendant no.1 would be at liberty to apply for modification of this order, in case Probate of the Will is granted.